

ASSEMBLY BILL

No. 2467

Introduced by Assembly Member Hueso

February 24, 2012

An act to add Section 6342.5 to the Family Code, and to amend Sections 136.2, 273.5, 646.9, and 1269c of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2467, as introduced, Hueso. Domestic violence and stalking: GPS monitoring.

Existing law makes it a crime for a person to willfully inflict upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition. Existing law also makes it a crime for a person to willfully, maliciously, and repeatedly follow or willfully and maliciously harass another person and to make a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family. Under existing law, a court is required, at the time of sentencing a person who is convicted of a crime of domestic violence, to consider an order restraining the defendant from any contact with the victim for up to 10 years. Existing law also authorizes, after notice and hearing, a court to make an order restraining a person from contact with a spouse or children as a result of domestic violence.

This bill would authorize a court, as part of a domestic violence restraining order, to order a defendant placed on active GPS monitoring. The bill would also authorize a court to place a defendant who is convicted of domestic violence or stalking, as defined above, where

probation is granted or the execution or imposition of a sentence is suspended, to be placed on active GPS monitoring, as specified.

Existing law authorizes the setting of bail or the release on his or her own recognizance of a person who has been arrested for, or charged with, an offense other than a capital offense. Under existing law, bail may be adjusted to a higher amount to ensure the protection of a victim, or family member of a victim, of domestic violence.

This bill would authorize a court, as a condition of bail or release on his or her own recognizance, to order a defendant who is charged with a crime of domestic violence or stalking placed on active GPS monitoring.

By increasing the duties of local agencies who monitor persons placed on active GPS monitoring, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6342.5 is added to the Family Code, to
- 2 read:
- 3 6342.5. (a) After notice and a hearing, the court may issue an
- 4 order requiring the restrained party to be placed on active GPS
- 5 monitoring.
- 6 (b) It is the intent of the Legislature that, when making this
- 7 decision, the court consider the seriousness of the facts before the
- 8 court, the probability of future violations, and the safety of the
- 9 victim and his or her immediate family before placing a party on
- 10 active GPS monitoring.
- 11 (c) For purposes of this section, “immediate family” means a
- 12 spouse, parent, child, or a person related by consanguinity or
- 13 affinity within the second degree or another person who regularly

1 resides in the household or who, within the prior six months,
2 regularly resided in the household.

3 SEC. 2. Section 136.2 of the Penal Code is amended to read:

4 136.2. (a) Except as provided in subdivision (c), upon a good
5 cause belief that harm to, or intimidation or dissuasion of, a victim
6 or witness has occurred or is reasonably likely to occur, ~~any~~ a court
7 with jurisdiction over a criminal matter may issue orders including,
8 but not limited to, the following:

9 (1) ~~Any~~ An order issued pursuant to Section 6320 of the Family
10 Code.

11 (2) An order that a defendant shall not violate any provision of
12 Section 136.1.

13 (3) An order that a person before the court other than a
14 defendant, including, but not limited to, a subpoenaed witness or
15 other person entering the courtroom of the court, shall not violate
16 any provisions of Section 136.1.

17 (4) An order that ~~any~~ a person described in this section shall
18 have no communication whatsoever with ~~any~~ a specified witness
19 or ~~any~~ a victim, except through an attorney under ~~any~~ reasonable
20 restrictions that the court may impose.

21 (5) An order calling for a hearing to determine if an order as
22 described in paragraphs (1) to (4), inclusive, should be issued.

23 (6) (A) An order that a particular law enforcement agency
24 within the jurisdiction of the court provide protection for a victim
25 or a witness, or both, or for immediate family members of a victim
26 or a witness who reside in the same household as the victim or
27 witness or within reasonable proximity of the victim's or witness'
28 household, as determined by the court. The order shall not be made
29 without the consent of the law enforcement agency except for
30 limited and specified periods of time and upon an express finding
31 by the court of a clear and present danger of harm to the victim or
32 witness or immediate family members of the victim or witness.

33 (B) For purposes of this paragraph, "immediate family
34 members" include the spouse, children, or parents of the victim
35 or witness.

36 (7) (A) ~~Any~~ An order protecting victims of violent crime from
37 all contact by the defendant, or contact, with the intent to annoy,
38 harass, threaten, or commit acts of violence, by the defendant. The
39 court or its designee shall transmit orders made under this
40 paragraph to law enforcement personnel within one business day

1 of the issuance, modification, extension, or termination of the
2 order, pursuant to subdivision (a) of Section 6380 of the Family
3 Code. It is the responsibility of the court to transmit the
4 modification, extension, or termination orders made under this
5 paragraph to the same agency that entered the original protective
6 order into the Domestic Violence Restraining Order System.

7 (B) (i) If a court does not issue an order pursuant to
8 subparagraph (A) in a case in which the defendant is charged with
9 a crime of domestic violence as defined in Section 13700, the court
10 on its own motion shall consider issuing a protective order upon
11 a good cause belief that harm to, or intimidation or dissuasion of,
12 a victim or witness has occurred or is reasonably likely to occur,
13 that provides as follows:

14 (I) The defendant shall not own, possess, purchase, receive, or
15 attempt to purchase or receive, a firearm while the protective order
16 is in effect.

17 (II) The defendant shall relinquish any firearms that he or she
18 owns or possesses pursuant to Section 527.9 of the Code of Civil
19 Procedure.

20 (ii) Every person who owns, possesses, purchases, or receives,
21 or attempts to purchase or receive, a firearm while this protective
22 order is in effect is punishable pursuant to Section 29825.

23 (C) ~~Any~~ An order issued, modified, extended, or terminated by
24 a court pursuant to this paragraph shall be issued on forms adopted
25 by the Judicial Council of California and that have been approved
26 by the Department of Justice pursuant to subdivision (i) of Section
27 6380 of the Family Code. However, the fact that an order issued
28 by a court pursuant to this section was not issued on forms adopted
29 by the Judicial Council and approved by the Department of Justice
30 shall not, in and of itself, make the order unenforceable.

31 (D) *A protective order under this paragraph may require the*
32 *defendant to be placed on active GPS monitoring.*

33 (b) ~~Any~~ A person violating ~~any~~ an order made pursuant to
34 paragraphs (1) to (7), inclusive, of subdivision (a) may be punished
35 for any substantive offense described in Section 136.1, or for a
36 contempt of the court making the order. A finding of contempt
37 shall not be a bar to prosecution for a violation of Section 136.1.
38 However, ~~any~~ a person so held in contempt shall be entitled to
39 credit for ~~any~~ punishment imposed therein against ~~any~~ a sentence
40 imposed upon conviction of an offense described in Section 136.1.

1 ~~Any~~ A conviction or acquittal for ~~any~~ a substantive offense under
2 Section 136.1 shall be a bar to a subsequent punishment for
3 contempt arising out of the same act.

4 (c) (1) Notwithstanding subdivisions (a) and (e), an emergency
5 protective order issued pursuant to Chapter 2 (commencing with
6 Section 6250) of Part 3 of Division 10 of the Family Code or
7 Section 646.91 of the Penal Code shall have precedence in
8 enforcement over any other restraining or protective order, provided
9 the emergency protective order meets all of the following
10 requirements:

11 (A) The emergency protective order is issued to protect one or
12 more individuals who are already protected persons under another
13 restraining or protective order.

14 (B) The emergency protective order restrains the individual who
15 is the restrained person in the other restraining or protective order
16 specified in subparagraph (A).

17 (C) The provisions of the emergency protective order are more
18 restrictive in relation to the restrained person than are the provisions
19 of the other restraining or protective order specified in
20 subparagraph (A).

21 (2) An emergency protective order that meets the requirements
22 of paragraph (1) shall have precedence in enforcement over the
23 provisions of any other restraining or protective order only with
24 respect to those provisions of the emergency protective order that
25 are more restrictive in relation to the restrained person.

26 (d) (1) A person subject to a protective order issued under this
27 section shall not own, possess, purchase, receive, or attempt to
28 purchase or receive a firearm while the protective order is in effect.

29 (2) The court shall order a person subject to a protective order
30 issued under this section to relinquish any firearms he or she owns
31 or possesses pursuant to Section 527.9 of the Code of Civil
32 Procedure.

33 (3) ~~Every~~ A person who owns, possesses, purchases or receives,
34 or attempts to purchase or receive a firearm while the protective
35 order is in effect is punishable pursuant to Section 29825.

36 (e) (1) In all cases where the defendant is charged with a crime
37 of domestic violence, as defined in Section 13700, the court shall
38 consider issuing the above-described orders on its own motion.
39 All interested parties shall receive a copy of those orders. In order
40 to facilitate this, the court's records of all criminal cases involving

1 domestic violence shall be marked to clearly alert the court to this
2 issue.

3 (2) In those cases in which a complaint, information, or
4 indictment charging a crime of domestic violence, as defined in
5 Section 13700, has been issued, a restraining order or protective
6 order against the defendant issued by the criminal court in that
7 case has precedence in enforcement over ~~any~~ a civil court order
8 against the defendant, unless a court issues an emergency protective
9 order pursuant to Chapter 2 (commencing with Section 6250) of
10 Part 3 of Division 10 of the Family Code or Section 646.91 of the
11 Penal Code, in which case the emergency protective order shall
12 have precedence in enforcement over any other restraining or
13 protective order, provided the emergency protective order meets
14 the following requirements:

15 (A) The emergency protective order is issued to protect one or
16 more individuals who are already protected persons under another
17 restraining or protective order.

18 (B) The emergency protective order restrains the individual who
19 is the restrained person in the other restraining or protective order
20 specified in subparagraph (A).

21 (C) The provisions of the emergency protective order are more
22 restrictive in relation to the restrained person than are the provisions
23 of the other restraining or protective order specified in
24 subparagraph (A).

25 (3) Custody and visitation with respect to the defendant and his
26 or her minor children may be ordered by a family or juvenile court
27 consistent with the protocol established pursuant to subdivision
28 (f), but if ordered after a criminal protective order has been issued
29 pursuant to this section, the custody and visitation order shall make
30 reference to, and acknowledge the precedence of enforcement of,
31 ~~any~~ an appropriate criminal protective order. On or before July 1,
32 2006, the Judicial Council shall modify the criminal and civil court
33 forms consistent with this subdivision.

34 (f) On or before January 1, 2003, the Judicial Council shall
35 promulgate a protocol, for adoption by each local court in
36 substantially similar terms, to provide for the timely coordination
37 of all orders against the same defendant and in favor of the same
38 named victim or victims. The protocol shall include, but shall not
39 be limited to, mechanisms for assuring appropriate communication
40 and information sharing between criminal, family, and juvenile

1 courts concerning orders and cases that involve the same parties,
2 and shall permit a family or juvenile court order to coexist with a
3 criminal court protective order subject to the following conditions:

4 (1) ~~Any~~ An order that permits contact between the restrained
5 person and his or her children shall provide for the safe exchange
6 of the children and shall not contain language either printed or
7 handwritten that violates a “no contact order” issued by a criminal
8 court.

9 (2) Safety of all parties shall be the courts’ paramount concern.
10 The family or juvenile court shall specify the time, day, place, and
11 manner of transfer of the child, as provided in Section 3100 of the
12 Family Code.

13 (g) On or before January 1, 2003, the Judicial Council shall
14 modify the criminal and civil court protective order forms
15 consistent with this section.

16 (h) In any case in which a complaint, information, or indictment
17 charging a crime of domestic violence, as defined in Section 13700,
18 has been filed, the court may consider, in determining whether
19 good cause exists to issue an order under paragraph (1) of
20 subdivision (a), the underlying nature of the offense charged, and
21 the information provided to the court pursuant to Section 273.75.

22 (i) In all cases in which a criminal defendant has been convicted
23 of a crime of domestic violence as defined in Section 13700, the
24 court, at the time of sentencing, shall consider issuing an order
25 restraining the defendant from any contact with the victim. The
26 order may be valid for up to 10 years, as determined by the court.
27 This protective order may be issued by the court regardless of
28 whether the defendant is sentenced to the state prison or a county
29 jail, or whether imposition of sentence is suspended and the
30 defendant is placed on probation. *The order may include provisions*
31 *for GPS monitoring of the defendant.* It is the intent of the
32 Legislature in enacting this subdivision that the duration of any
33 restraining order issued by the court be based upon the seriousness
34 of the facts before the court, the probability of future violations,
35 and the safety of the victim and his or her immediate family.

36 SEC. 3. Section 273.5 of the Penal Code is amended to read:

37 273.5. (a) ~~Any~~ A person who willfully inflicts upon a person
38 who is his or her spouse, former spouse, cohabitant, former
39 cohabitant, or the mother or father of his or her child, corporal
40 injury resulting in a traumatic condition is guilty of a felony; and,

1 upon conviction thereof, shall be punished by imprisonment in the
2 state prison for two, three, or four years, or in a county jail for not
3 more than one year, or by a fine of up to six thousand dollars
4 (\$6,000), or by both that fine and imprisonment.

5 (b) Holding oneself out to be the husband or wife of the person
6 with whom one is cohabiting is not necessary to constitute
7 cohabitation as the term is used in this section.

8 (c) As used in this section, “traumatic condition” means a
9 condition of the body, such as a wound, or external or internal
10 injury, including, but not limited to, injury as a result of
11 strangulation or suffocation, whether of a minor or serious nature,
12 caused by a physical force. For purposes of this section,
13 “strangulation” and “suffocation” include impeding the normal
14 breathing or circulation of the blood of a person by applying
15 pressure on the throat or neck.

16 (d) For the purpose of this section, a person shall be considered
17 the father or mother of another person’s child if the alleged male
18 parent is presumed the natural father under Sections 7611 and 7612
19 of the Family Code.

20 (e) (1) ~~Any~~ A person convicted of violating this section for acts
21 occurring within seven years of a previous conviction under
22 subdivision (a), or subdivision (d) of Section 243, or Section 243.4,
23 244, 244.5, or 245, shall be punished by imprisonment in a county
24 jail for not more than one year, or by imprisonment in the state
25 prison for two, four, or five years, or by both imprisonment and a
26 fine of up to ten thousand dollars (\$10,000).

27 (2) ~~Any~~ A person convicted of a violation of this section for
28 acts occurring within seven years of a previous conviction under
29 subdivision (e) of Section 243 shall be punished by imprisonment
30 in the state prison for two, three, or four years, or in a county jail
31 for not more than one year, or by a fine of up to ten thousand
32 dollars (\$10,000), or by both that imprisonment and fine.

33 (f) If probation is granted to any person convicted under
34 subdivision (a), the court shall impose probation consistent with
35 the provisions of Section 1203.097.

36 (g) If probation is granted, or the execution or imposition of a
37 sentence is suspended, for any defendant convicted under
38 subdivision (a) who has been convicted of any prior offense
39 specified in subdivision (e), the court shall impose one of the
40 following conditions of probation:

1 (1) If the defendant has suffered one prior conviction within the
2 previous seven years for a violation of ~~any~~ *an* offense specified in
3 subdivision (e), it shall be a condition thereof, in addition to the
4 provisions contained in Section 1203.097, that he or she be
5 imprisoned in a county jail for not less than 15 days.

6 (2) If the defendant has suffered two or more prior convictions
7 within the previous seven years for a violation of ~~any~~ *an* offense
8 specified in subdivision (e), it shall be a condition of probation,
9 in addition to the provisions contained in Section 1203.097, that
10 he or she be imprisoned in a county jail for not less than 60 days.

11 (3) The court, upon a showing of good cause, may find that the
12 mandatory imprisonment required by this subdivision shall not be
13 imposed and shall state on the record its reasons for finding good
14 cause.

15 (h) (1) If probation is granted upon conviction of a violation
16 of subdivision (a), the conditions of probation may include,
17 consistent with the terms of probation imposed pursuant to Section
18 1203.097, in lieu of a fine, one or both of the following
19 requirements:

20 ~~(1)~~

21 (A) That the defendant make payments to a battered women's
22 shelter, up to a maximum of five thousand dollars (\$5,000),
23 pursuant to Section 1203.097.

24 ~~(2)~~

25 (B) That the defendant reimburse the victim for reasonable costs
26 of counseling and other reasonable expenses that the court finds
27 are the direct result of the defendant's offense.

28 ~~For any~~

29 (2) *For an* order to pay a fine, make payments to a battered
30 women's shelter, or pay restitution as a condition of probation
31 under this subdivision, the court shall make a determination of the
32 defendant's ability to pay. In no event shall ~~any~~ *an* order to make
33 payments to a battered women's shelter be made if it would impair
34 the ability of the defendant to pay direct restitution to the victim
35 or court-ordered child support. Where the injury to a married person
36 is caused in whole or in part by the criminal acts of his or her
37 spouse in violation of this section, the community property may
38 not be used to discharge the liability of the offending spouse for
39 restitution to the injured spouse, required by Section 1203.04, as
40 operative on or before August 2, 1995, or Section 1202.4, or to a

1 shelter for costs with regard to the injured spouse and dependents,
2 required by this section, until all separate property of the offending
3 spouse is exhausted.

4 (i) Upon conviction under subdivision (a), the sentencing court
5 shall also consider issuing an order restraining the defendant from
6 ~~any~~ contact with the victim, which may be valid for up to 10 years,
7 as determined by the court. It is the intent of the Legislature that
8 the length of ~~any~~ a restraining order be based upon the seriousness
9 of the facts before the court, the probability of future violations,
10 and the safety of the victim and his or her immediate family. This
11 protective order may be issued by the court whether the defendant
12 is sentenced to state prison, county jail, or if imposition of sentence
13 is suspended and the defendant is placed on probation.

14 (j) *(1) If probation is granted or the execution or imposition of*
15 *a sentence is suspended for a defendant convicted under*
16 *subdivision (a), the sentencing court may order the defendant to*
17 *be placed on active GPS monitoring. It is the intent of the*
18 *Legislature that, when making this decision, the court consider*
19 *the seriousness of the facts before the court, the probability of*
20 *future violations, and the safety of the victim and his or her*
21 *immediate family before placing a defendant on active GPS*
22 *monitoring.*

23 (2) *For purposes of this section, "immediate family" means a*
24 *spouse, parent, child, or a person related by consanguinity or*
25 *affinity within the second degree or another person who regularly*
26 *resides in the household or who, within the prior six months,*
27 *regularly resided in the household.*

28 SEC. 4. Section 646.9 of the Penal Code is amended to read:

29 646.9. (a) ~~Any~~—A person who willfully, maliciously, and
30 repeatedly follows or willfully and maliciously harasses another
31 person and who makes a credible threat with the intent to place
32 that person in reasonable fear for his or her safety, or the safety of
33 his or her immediate family is guilty of the crime of stalking,
34 punishable by imprisonment in a county jail for not more than one
35 year, or by a fine of not more than one thousand dollars (\$1,000),
36 or by both that fine and imprisonment, or by imprisonment in the
37 state prison.

38 (b) ~~Any~~—A person who violates subdivision (a) when there is a
39 temporary restraining order, injunction, or any other court order
40 in effect prohibiting the behavior described in subdivision (a)

1 against the same party, shall be punished by imprisonment in the
2 state prison for two, three, or four years.

3 (c) (1) Every person who, after having been convicted of a
4 felony under Section 273.5, 273.6, or 422, commits a violation of
5 subdivision (a) shall be punished by imprisonment in a county jail
6 for not more than one year, or by a fine of not more than one
7 thousand dollars (\$1,000), or by both that fine and imprisonment,
8 or by imprisonment in the state prison for two, three, or five years.

9 (2) Every person who, after having been convicted of a felony
10 under subdivision (a), commits a violation of this section shall be
11 punished by imprisonment in the state prison for two, three, or
12 five years.

13 (d) In addition to the penalties provided in this section, the
14 sentencing court may order a person convicted of a felony under
15 this section to register as a sex offender pursuant to Section
16 290.006.

17 (e) *For the purposes of this section, the following definitions*
18 *apply:*

19 (1) *“Course of conduct” means two or more acts occurring*
20 *over a period of time, however short, evidencing a continuity of*
21 *purpose. Constitutionally protected activity is not included within*
22 *the meaning of “course of conduct.”*

23 (2) *“Credible threat” means a verbal or written threat, including*
24 *that performed through the use of an electronic communication*
25 *device, or a threat implied by a pattern of conduct or a combination*
26 *of verbal, written, or electronically communicated statements and*
27 *conduct, made with the intent to place the person who is the target*
28 *of the threat in reasonable fear for his or her safety or the safety*
29 *of his or her family, and made with the apparent ability to carry*
30 *out the threat so as to cause the person who is the target of the*
31 *threat to reasonably fear for his or her safety or the safety of his*
32 *or her family. It is not necessary to prove that the defendant had*
33 *the intent to actually carry out the threat. The present incarceration*
34 *of a person making the threat shall not be a bar to prosecution*
35 *under this section. Constitutionally protected activity is not*
36 *included within the meaning of “credible threat.”*

37 (3) *“Electronic communication device” includes, but is not*
38 *limited to, telephones, cellular phones, computers, video recorders,*
39 *fax machines, or pagers. “Electronic communication” has the*

1 *same meaning as the term defined in Subsection 12 of Section 2510*
2 *of Title 18 of the United States Code.*

3 (e)

4 (4) For the purposes of this section, “harasses” “Harass” means
5 engages to engage in a knowing and willful course of conduct
6 directed at a specific person that seriously alarms, annoys, torments,
7 or terrorizes the person, and that serves no legitimate purpose.

8 (f) For the purposes of this section, “course of conduct” means
9 two or more acts occurring over a period of time, however short,
10 evidencing a continuity of purpose. Constitutionally protected
11 activity is not included within the meaning of “course of conduct.”

12 (g) For the purposes of this section, “credible threat” means a
13 verbal or written threat, including that performed through the use
14 of an electronic communication device, or a threat implied by a
15 pattern of conduct or a combination of verbal, written, or
16 electronically communicated statements and conduct, made with
17 the intent to place the person that is the target of the threat in
18 reasonable fear for his or her safety or the safety of his or her
19 family, and made with the apparent ability to carry out the threat
20 so as to cause the person who is the target of the threat to
21 reasonably fear for his or her safety or the safety of his or her
22 family. It is not necessary to prove that the defendant had the intent
23 to actually carry out the threat. The present incarceration of a
24 person making the threat shall not be a bar to prosecution under
25 this section. Constitutionally protected activity is not included
26 within the meaning of “credible threat.”

27 (h) For purposes of this section, the term “electronic
28 communication device” includes, but is not limited to, telephones,
29 cellular phones, computers, video recorders, fax machines, or
30 pagers. “Electronic communication” has the same meaning as the
31 term defined in Subsection 12 of Section 2510 of Title 18 of the
32 United States Code.

33 (5) “Immediate family” means a spouse, parent, child, a person
34 related by consanguinity or affinity within the second degree, or
35 any other person who regularly resides in the household, or who,
36 within the prior six months, regularly resided in the household.

37 (i)

38 (f) This section shall not apply to conduct that occurs during
39 labor picketing.

40 (j)

1 (g) If probation is granted, or the execution or imposition of a
2 sentence is suspended, for ~~any~~ a person convicted under this
3 section, it shall be a condition of probation that the person
4 participate in counseling, as designated by the court. However, the
5 court, upon a showing of good cause, may find that the counseling
6 requirement shall not be imposed.

7 ~~(k)~~

8 (h) (1) The sentencing court also shall consider issuing an order
9 restraining the defendant from any contact with the victim, that
10 may be valid for up to 10 years, as determined by the court. It is
11 the intent of the Legislature that the length of any restraining order
12 be based upon the seriousness of the facts before the court, the
13 probability of future violations, and the safety of the victim and
14 his or her immediate family.

15 (2) This protective order may be issued by the court whether
16 the defendant is sentenced to state prison, county jail, or if
17 imposition of sentence is suspended and the defendant is placed
18 on probation.

19 (i) *If probation is granted or the execution or imposition of a*
20 *sentence is suspended for a defendant convicted under subdivision*
21 *(a), the sentencing court may order the defendant placed on active*
22 *GPS monitoring. It is the intent of the Legislature that the court,*
23 *in making this decision, consider the seriousness of the facts before*
24 *the court, the probability of future violations, and the safety of the*
25 *victim and his or her immediate family before placing the defendant*
26 *on active GPS monitoring.*

27 ~~(l) For purposes of this section, "immediate family" means any~~
28 ~~spouse, parent, child, any person related by consanguinity or~~
29 ~~affinity within the second degree, or any other person who regularly~~
30 ~~resides in the household, or who, within the prior six months,~~
31 ~~regularly resided in the household.~~

32 ~~(m)~~

33 (j) The court shall consider whether the defendant would benefit
34 from treatment pursuant to Section 2684. If it is determined to be
35 appropriate, the court shall recommend that the Department of
36 Corrections and Rehabilitation make a certification as provided in
37 Section 2684. Upon the certification, the defendant shall be
38 evaluated and transferred to the appropriate hospital for treatment
39 pursuant to Section 2684.

40 SEC. 5. Section 1269c of the Penal Code is amended to read:

1 1269c. (a) If a defendant is arrested without a warrant for a
2 bailable felony offense or for the misdemeanor offense of violating
3 a domestic violence restraining order, and a peace officer has
4 reasonable cause to believe that the amount of bail set forth in the
5 schedule of bail for that offense is insufficient to ensure the
6 defendant's appearance or to ensure the protection of a victim, or
7 family member of a victim, of domestic violence, the peace officer
8 shall prepare a declaration under penalty of perjury setting forth
9 the facts and circumstances in support of his or her belief and file
10 it with a magistrate, as defined in Section 808, or his or her
11 commissioner, in the county in which the offense is alleged to have
12 been committed or having personal jurisdiction over the defendant,
13 requesting an order setting a higher bail. ~~Except~~

14 (b) *Except* where the defendant is charged with an offense listed
15 in subdivision (a) of Section 1270.1, the defendant, either
16 personally or through his or her attorney, friend, or family member,
17 also may make application to the magistrate for release on bail
18 lower than that provided in the schedule of bail or on his or her
19 own recognizance. ~~The~~

20 (c) *The* magistrate or commissioner to whom the application is
21 made is authorized to set bail in an amount that he or she deems
22 sufficient to ensure the defendant's appearance or to ensure the
23 protection of a victim, or family member of a victim, of domestic
24 violence, and to set bail on the terms and conditions that he or she,
25 in his or her discretion, deems appropriate, or he or she may
26 authorize the defendant's release on his or her own recognizance.
27 ~~If,~~

28 (d) *The* magistrate or commissioner may, as a condition of bail
29 or release on his or her own recognizance, order a defendant who
30 is charged with a crime of domestic violence or stalking placed
31 on active GPS monitoring. *It is the intent of the Legislature that*
32 *the court, in making this decision, consider the seriousness of the*
33 *facts before the court, the probability of future violations, and the*
34 *safety of the victim and his or her immediate family before placing*
35 *the defendant on active GPS monitoring.*

36 (e) *If,* after the application is made, no order changing the
37 amount of bail is issued within eight hours after booking, the
38 defendant shall be entitled to be released on posting the amount
39 of bail set forth in the applicable bail schedule.

1 SEC. 6. If the Commission on State Mandates determines that
2 this act contains costs mandated by the state, reimbursement to
3 local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

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